NOT DESIGNATED FOR PUBLICATION

STEVEN W. GUILLOT AND GAIL P. GUILLOT	*	**NO. 2000-CA-1030**
	*	**COURT OF APPEAL**
VERSUS		
	*	**FOURTH CIRCUIT**
EAGLE PACKING COMPANY, TERRY C. MILLS, RELIANCE INSURANCE COMPANY AND DEF AND XYZ INSURANCE COMPANY	*	**STATE OF LOUISIANA**
	*	
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APPEAL FROM
ST. BERNARD 34TH JUDICIAL DISTRICT COURT
NO. 80-139, DIVISION "B"
Honorable David S. Gorbaty, Judge
* * * * * *
Chief Judge William H. Byrnes III
* * * * * *

(Court composed of Chief Judge William H. Byrnes III, Judge Miriam G. Waltzer, Judge Michael E. Kirby)

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AFFIRMED

Plaintiffs-appellees, Steven W. Guillot and his wife Gail P. Guillot, appeal a judgment in their favor on their personal injury claims, awarding Steven $2,500 in general damages, $8,000 for past medical expenses, and $3,500 for past lost wages, and awarding Gail nothing for her claim for loss of consortium. The plaintiffs also complain that the separate judgment for $4,852 for costs was erroneously low. Judgment was rendered against the defendants-appellees, Terry Mills, Eagle Packing Company, Inc. and Reliance Insurance Company. We affirm.

This matter arises out of an automobile collision that occurred on November 7, 1995 in St. Bernard Parish, when a truck driven by Terry C. Mills and insured by Reliance Insurance Company, struck the rear of a 1996 Dodge Neon driven by Steven W. Guillot. At the time of the collision, Mr. Guillot was stopped in traffic behind another vehicle waiting for a red light to change. The impact of Mr. Mills' vehicle forced Mr. Guillot's vehicle into the rear of the preceding vehicle. It was stipulated that Mr. Mills was in the course and scope of his employment with the defendant, Eagle Packing

Company and that Mr. Mills was at fault in causing the accident.

I. PLAINTIFFS' FIRST ASSIGNMENT OF ERROR

In their first assignment of error the plaintiffs complain that the jury abused its discretion or by awarding no damages or in awarding inadequate general and special damages that were inadequate. An analysis of the record supports the implicit finding of the jury that the bulk of the injuries for which the plaintiffs seek compensation were either pre-existing and/or were not as severe as alleged by the plaintiff.

Mr. Guillot testified that he was involved in an automobile accident in 1985 and a fall off a ladder in 1990.

As a result of the 1985 automobile accident in which he was rear-ended, Mr. Guillot complained of neck and back pains. He was treated by Dr. John Olson, a neurologist, beginning on June 24, 1985 and ending on December 14, 1988:

> Mr. Guillot came to me with complaints of neck and back difficulty that he related to a motor vehicle accident that had taken place around the time of the initial visit. I can't remember the exact date. But he had, uhm [sic], pretty typical presentation. **He had some neck pain with radiation in to the left arm. He had headaches associated with the injury** and had a tendency to refer from the posterior portion of the head to the area behind the left orbital area. Also some back pain. [Emphasis added.]

Dr. Olson described a CT scan showing some damage at L4-5 and L5-S1:

> "He was having fairly severe back pain that really didn't respond dramatically to treatment.
>
> I later performed an EMG that indicated he had some right l5 root involvement. At that time I suggested Mr. Guillot seek a surgical consultation. I ha[d] suspicions at some point in time that he may need to have surgery on the lumbar spine.
>
> You felt based on the EMG and CT scans, as well as the physical complaints rendered to you, that he was a candidate for surgery?
>
> Right. **As you see, he presented to me initially on June 24th of '85 and was still symptomatic on December 14th of '88.** I thought he would have been possibly a surgical candidate. However, the patient makes that decision in connection with the surgery. [Emphasis added.]

Dr. Olson added that as of the last time he saw the plaintiff on December 14, 1988 he would have placed him on physical restrictions had he been asked. He explained that he should not be lifting more than "about 10 or 15 pounds." Dr. Olson opined that plaintiff should not have undertaken work involving repetitive bending or crawling. He said plaintiff's damage at L4-5 would make it very difficult for the patient to sit prolonged periods of time. Dr. Olson concluded that this meant basically light or sedentary type work, with the proviso that the plaintiff be permitted

to shift from sitting to standing as required.

When asked how the appropriate surgery could be expected to impact these recommended restrictions, Dr. Olson responded:

> Well, to tell you the truth, you know, after surgery those restrictions actually should be a little harder.

In a report date January 26, 1989, Dr. Olson noted that:

> In May of 1986, **the patient's symptoms continued to escalate**, and at that time **I felt a good case could be made for hospitalization** for myelography, but as always in non-life-threatening situations that decision has to be left to the individual patient. At that time Mr. Guillot did not wish hospitalization.
>
> Mr. Guillot's last visit was on 12/14/88. At that time he claimed that he had no significant change, but that he had to alter his lifestyle significantly because of chronic pain. The patient stated that he was no longer able to function as a emergency technician on a continuing basis, and that he had only been able to work intermittently at relatively sedentary jobs. . . .
>
> In essence, this is a gentlemen who sustained back and neck injuries as a direct result of a motor vehicle accident on 06/06/85. . . .
>
> * * * *
>
> I suspect that [Mr. Guillot] may need continuing physical therapy on a semi-chronic basis and at some point in time may require more aggressive treatment of his condition.

At the same time Dr. Olson's report noted improvement in the

condition of plaintiff's neck. Plaintiff's appellate argument makes much of the fact that Dr. Olson testified that it was possible for the plaintiff's condition to improve. However, we find that this testimony was given largely in the sense that anything is possible, and was qualified by the supposition that the plaintiff would not be engaged in physically stressful work and would embark on a therapeutic exercise program. The jury likely attached greater significance, as it should have, to the following portion of Dr. Olson's testimony:

> Q. Now, in a situation such as this where you are three and a half or perhaps more than that years after the accident, and the patient is still symptomatic, **more probably than not** do you expect to see that pain become chronic from that point forward?
> R. I would think so, yes.
> **Q.** And in other words, by chronic, **that is something he would, in all probability, have the remainder of his life?**
> **R. Yes. Those patients have a pretty characteristic course. . . .**

Dr. Olson pointed out that if the patient were forced to engage in work activities beyond those limitations, then Dr. Olson would expect the condition to worsen:

> Once the changes are initiated as a result of disc damage, they tend to continue on, I believe, infinite [sic], no matter what happens. Like if you did serial MRI scans on a patient with herniated discs, you would see he [sic] an evolution of changes over the years that represented the stages

> of deterioration that, you know, you would see no matter what the patient was doing. If he engaged in heavy physical activities or contact sports, you would expect the changes [to] be more rapid.

The essence of Dr. Olson's testimony was that under ideal conditions, it was possible for the plaintiff to experience some symptomatic relief, but that the underlying physical condition would remain and would be expected to deteriorate over time.

Mr. Guillot testified that he recovered sufficiently from the 1985 accident to be able to handle boxes of chicken weighing 62 lbs. in connection with his employment with Copeland Enterprises (Popeyes). Dr. Olson testified that the plaintiff might undertake ill-advised employment involving such lifting, but that it would take a toll on his existing condition. The jury could reasonably have concluded that the plaintiff was responsible for the aggravation of his earlier injuries when he undertook physically demanding activities.

Plaintiff's testimony was corroborated by that of his wife and co-plaintiff, Mrs. Gail P. Guillot, who stated that his recovery from the 1985 accident was sufficient to enable him to do all things he had been able to do prior to that accident. The members of the jury, as fact finders, were entitled to weigh Mrs. Guillot's interest in the outcome of the litigation, along with their impressions of her demeanor and tone in deciding how much weight to

give to her testimony when contrasted with negative inferences adverse to the position of the plaintiffs.

For example, on cross-examination Mr. Guillot admitted that in answering interrogatories he had failed to list Dr. Olson in connection with treatment for the 1985 accident. He also failed to mention Dr. Olson when deposed. He ascribed this oversight to forgetfulness. Although he testified that he would be unlikely to forget it if he had ever had and EMG because "they stick needles in you", when deposed he failed to recall having Dr. Olson administer such a test. He also failed to recall having Dr. Ruel administer an MRI. While this Court might accept Mr. Guillot's forgetfulness as a reasonable explanation for several shortcomings in his testimony, had the jury chosen to allow these patently problematic aspects of plaintiff's testimony to cause them to question the accuracy of other aspects of Mr. Guillot's testimony, we cannot say that the jury was manifestly erroneous or clearly wrong in doing so. The jury had the benefit of observing Mr. Guillot's tone and demeanor which we do not.

Mr. Guillot admitted telling Dr. Ruel that his employment with Greyhound required no heavy lifting in spite of the fact that he testified that it did require heavy lifting. Mr. Guillot explained this apparent inconsistency by stating that the heavy lifting requirement was imposed

subsequent to the time he made his statement to Dr. Ruel, i.e., his statement to Dr. Ruel was true at the time it was made and it became untrue only subsequently. While this explanation might appear reasonable to this Court, again we cannot say that the jurors were, while having the benefit of observing Mr. Guillot's demeanor and listening to his tone in the process of evaluating his testimony in the context of the evidence as a whole, unreasonable or manifestly erroneous if they found his explanation too convenient.

It was stipulated that Tom Meunier was an expert in the field of vocational rehabilitation. When asked to contrast the restrictions placed on the plaintiff by Dr. Manale subsequent to the automobile accident that is the subject of the instant litigation with those placed on the plaintiff previously by Drs. Olson and Ruel, Meunier responded:

> A. [F]rom my perspective I am looking at essentially the same restrictions, I mean the same ball park physical-exertion wise before the injury as afterwards. . . .
>
> Q. Now, at the time of the accident what is the understanding of the type of employment he was engaged in ?
>
> A. At the time of the accident he was working as an emergency medical service coordinator. He was working for . . . . American Medical Response. He said there was a lot of driving back and forth, running an office in New Orleans and Gulfport. It was a one-hour trip back and forth from New

> Orleans to Gulfport. He was in that job, I think for about three years or so before the injury.
>
> In terms of the exertional requirement of that type of job – not EMT work but what he was doing – it is classified by the Department of Labor as light, which means that person generally in that occupation does not have to lift, carry, push or pull more than 20 pounds on occasion, and no repetitive lifting, carrying, pushing and pulling up to ten.
>
> Q. And following this accident, according to Dr. Manale's disability assessment, he would still be able to fulfill the function of a job of this type?
>
> A. Yes.

Mr. Meunier also testified that he saw no reason why the plaintiff could not continue in his employment as a commercial sales manager with West Tech Security.

In 1990, Mr. Guillot fell off a ladder while working for Popeyes. As a result he suffered a collapsed lung and hemothorax as well as some back and neck pain. He was treated by Dr. Steven Jones, a pulmonologist, for his lung problems. Dr. Jones referred Mr. Guillot to Dr. Robert Ruel, an orthopedic surgeon, for his neck and back complaints.

Dr. Ruel treated him from October 20, 1990 until October 7, 1991. Mr. Guillot was released to work on July 2, 1991. Dr. Ruel testified by video deposition that as of July 1, 1991, Mr. Guillot was not suffering from

lumbar sciatica (nerve pain). As a result of therapy and exercise, the condition of Mr. Guillot's back was improving. Dr. Ruel also testified that an MRI performed on Mr. Guillot on January 8, 1991, revealed a bulging disc at L5-S1. The MRI report indicated that the bulge only involved epidermal fat and not the nerve root. Dr. Ruel further testified that Mr. Guillot did not have reproducible sciatic (nerve) pain in his legs, his back was improving and getting stronger, and he was not a candidate for surgery.

Dr. Ruel described an old nondisplaced fracture at the tip of the spinous process of C6 as non-tender and insignificant. Dr. Ruel's treatment concentrated on Mr. Guillot's lower back.

After his 1990 fall, Mr. Guillot began working for Greyhound Lines, Inc.

Plaintiff admitted to Dr. Manale that he was involved in an accident in 1985. Mr. Guillot indicated to Dr. Manale that he healed after only a couple of months. He failed to give him the correct name of the doctor who treated him. In actuality, the 1985 accident was more serious than described by Mr. Guillot to Dr. Manale. Dr. Olson was still treating Mr. Guillot three years after the accident. Diagnostic testing done in connection with the 1985 injury showed disc injury at the same level for which Mr. Guillot now seeks compensation from the current defendants.

Mrs. Guillot testified that her husband recovered fully from his 1990 fall.

As a result of the accident that forms the basis of the instant litigation, Mr. Guillot initially sought treatment at the emergency room of Lakeland Hospital where he was advised to see an orthopedic surgeon. He began treatment with Dr. Bernard Manale, a board certified orthopedic surgeon.

Dr. Robert Steiner performed an IME on Mr. Guillot. Although Mr. Guillot knew that this procedure was being performed in contemplation of the instant litigation, he denied that he had incurred any prior injury, i.e., he did not admit to the previous 1985 and 1990 accidents. Additional inferences unfavorable to Mr. Guillot's credibility could reasonably be drawn by the fact finder when Dr. Steiner testified that his examination revealed no objective evidence of injury to either the neck or low back, and from the fact that Dr. Manale's records failed to document any objective findings. This would permit a reasonable fact finder to conclude that the plaintiff's subjective complaints are without foundation, and/or are exaggerated and/or they are unrelated to the accident that is the basis of the instant litigation.

We are aware of the Supreme Court's directive in *Ambrose v. New Orleans Police Dept. Ambulance. Service,* 93-3099, p. 7-8 (La. 7/5/94), 639

So.2d 216 , 220-221:

> In *Arceneaux v. Domingue*, 365 So.2d 1330 (La.1978), this Court held that the court of appeal should not upset the factual findings of a trial court absent manifest error or unless clearly wrong. A proper review, therefore, cannot be "completed by reading so much of the record as will reveal a reasonable factual basis for the finding in the trial court; there must be a further determination that the record established that the finding is not clearly wrong." *Id.* at 1333. More recently, regarding this constitutional appellate review of fact in civil cases, La. Const. art. 5, § 10, we have had occasion to say in *Youn v. Maritime Overseas Corp.*, 623 So.2d 1257 (La.1993), a case which involved the review of damages, that "the discretion vested in the trier of fact is 'great,' and even vast," and in *Stobart v. State*, 617 So.2d 880, 882-83 (La.1993), which involved the standard of review of findings of fact, a "court of appeal may not set aside a trial court's or a jury's finding of fact in the absence of 'manifest error' or unless it is 'clearly wrong,' " and "where two permissible views of the evidence exists, the factfinder's choice between them cannot be manifestly erroneous or clearly wrong." Id. In each of these cases there was but a perpetuation of the principle set down in Arceneaux.
>
> Notwithstanding the Court's earlier guidance to reviewing courts in *Stobart v. State through DOTD*, 617 So.2d 880 (La.1993), it was not our purpose in that case to mandate that the trial court's factual determinations cannot ever, or hardly ever, be upset. Although deference to the factfinder should be accorded, the court of appeal, and the Louisiana Supreme Court, nonetheless have a constitutional duty to review facts. [Footnote omitted.] Of course, the reviewing court may not

> merely decide if it would have found the facts of the case differently. Rather, notwithstanding the belief that they might have decided it differently, the court of appeal should affirm the trial court where the latter's judgment is not clearly wrong or manifestly erroneous. Because the court of appeal has a constitutional function to perform, it has every right to determine whether the trial court verdict was clearly wrong based on the evidence, or clearly without evidentiary support.

Pursuant to *Ambrose,* we have not only determined that a factual basis exists in support of the jury findings and the judgment below, we have also determined that the findings are not clearly wrong after a review of the record as a whole. This review of the record as a whole reinforces the reasonable inference that there was no abuse of the great and vast discretion (*Youn, supra)* in the matter of general damages, and no manifest error or abuse of discretion regarding special damages.

In addition to the evidence already analyzed permitting the fact finder to make such reasonable inferences, we note that Dr. Steiner was the only witness who compared the 1991 pre-accident MRI to the 1996 post accident MRI of Mr. Guillots' lumbar spine. Dr. Steiner showed both films to the jury and explained that, "There are no differences."

Dr. Steiner also examined plaintiff's neck and reviewed test results and records concerning Mr. Guillot's' neck injury. It was Dr. Steiner's

opinion that the plaintiff presented nothing more than degenerative changes in the neck which more probably than not pre-existed the accident and were not representative of a trauma caused by this accident.

The minimal nature of the accident, when cumulated with the medical evidence already discussed, would also permit the jury to infer that Mr. Guillot's injuries were correspondingly minimal. Sgt. Theriot, the investigating officer (and also a paramedic) testified that Mr. Mills did not appear to be injured or incoherent at the scene. In filling out his report, Sgt. Theriot noted no injuries arising out of the accident. We recognize the fact that a victim's accident injuries may not manifest themselves immediately upon impact, but a reasonable fact finder in considering the evidence as a whole, just as this Court is admonished to do by the Supreme Court in *Ambrose, supra,* could reasonably conclude that Sgt. Theriot's testimony was consistent with the defendant's position that any injuries sustained by the plaintiff had to be minimal. Sgt. Theriot also testified that he observed no broken glass from headlights or taillights or any other form of debris. This is further proof of the minimal nature of an accident that involved three vehicles making contact end to end where the potential for head or taillight damage would be maximized.

The plaintiff makes numerous arguments about the calculation of lost

earnings, but those arguments are based on the supposition that plaintiff's injuries arose out of the 1995 accident, and the further supposition that those injuries were as severe as alleged by the plaintiff. The jury apparently did not agree. We cannot say that the jury acted unreasonably in reaching what we infer to be its conclusions in this regard.

Dr. Thomas McNish was qualified as an expert in the fields of Aerospace Medicine, engineering, bio-mechanics and injury analysis. He testified that the findings on Mr. Guillot's MRI and other diagnostic studies were degenerative in nature. His injury causation analysis showed that even accepting a very conservative figure for the velocity change in connection with the accident, that the stresses placed on Mr. Guillot's spine were insufficient to have caused a spinal injury. It was his opinion that the worst Mr. Guillot could have experienced as a result of the collision that gives rise to the instant litigation was a sprain or strain type of injury.

Plaintiff's expert, Dr. Ruel, who treated plaintiff in connection with the 1990 incident testified by deposition that plaintiff was not a candidate for surgery at that time. On the other hand, Dr. Olson testified that plaintiff was potentially a candidate for surgery in 1988. Further, Dr. Ruel also testified that he would never recommend surgery based upon subjective complaints of pain coupled with an MRI. However, this is inconsistent with Dr.

Manale's decision to perform surgery on Mr. Guillot. Additionally, the jury could have reasonably inferred that Dr. Manale would have recommended surgery in 1990 just as he did in 1996, which would be the logical conclusion to be drawn from Dr. Steiner's testimony stating that there "are no differences" between the 1991 MRI and the 1996 MRI.

The plaintiff contends that even if his back pain can be attributed to pre-existing factors, his neck pain could not. However, there is evidence in the record that would permit a reasonable fact finder to infer that the neck pain was attributable to the prior accidents and/or the neck pain was not as significant as the plaintiff contended. The surgery performed by Dr. Manale, the physician upon whom the plaintiff largely based his case, testified that the operation he performed on the plaintiff was for the purpose of eliminating leg pain (originating in the back), not for the purpose of eliminating neck pain. When the plaintiff visited Dr. Manale for the second time (November 30, 1995) the plaintiff complained of some swelling, tenderness and spasm around his neck, but Dr. Manale noted improvement and released him to go back to work. When plaintiff next returned on January 4, 1996, Dr. Manale noted that he continued to improve and there was no longer any sign of spasm. However, on a subsequent visit he did note spasm in the neck. The jury could have reasonably made inferences

unfavorable to plaintiff's case as a result of other testimony elicited from Dr. Manale on cross-examination. Dr. Manale testified that he found no objective symptoms at the time he first saw the plaintiff. He was further examined about that first visit and subsequent visits:

> Q. And so you also, I guess, performed a general physical examination? You had the gentlemen take his shirt off?
>
> A. Yes. I wanted to see if he had fresh injuries or bruises or cuts or scrapes. And I didn't see any.
>
> Q. And you didn't see any bruises or cuts or scratches anywhere in particular on the chest and waist area?
>
> A. That is correct.
>
> Q. The next time is November 30, 1995. Can you please relate to the jury each of the objective physical findings relative to his lower back at that time?
>
> A. There were none.
>
> Q. And on that examination did he tell you anything further about his prior medical history?
>
> A. No.
>
> Q. And at that time you released him to return to work?
>
> A. Yes.
>
> Q. The next time you saw him was on January 4th, 1996?

A. Yes, sir.

Q. And again, there were no objective physical findings relative to his lower back?

A. That's right.

* * *
*

Q. He told you he was doing better at the time?

A. Yes.

Q. Did he tell you anything further about his past medical history?

A. No.

Q. The same holds true for the February 6, 1996 visit?

A. Yes, that is correct.

The cross-examination of Dr. Manale proceeded along these lines until the narrative arrived at the point of the May 2, 1996 visit by the plaintiff:

Q. Did you see degenerative changes?

A. Yes. Those diagnoses are based on imaging studies, MRI and X-rays. We went through the MRI, which showed dehydration. That is a sign of degenerative disc disease. And herniation, that is called disc displacement.

Q. There was still no objective physical findings

relative to his lumbar spine?

A. Right.

Q. And you still had no further medical history, past medical history from this patient?

A. That is correct.

Again, Dr. Manale's testimony proceeded along these lines in describing subsequent office visits. Dr. Manale performed back surgery on November 27, 1996 and released the plaintiff to return to work on February 3, 1997. Dr. Manale testified that between April 1, 1998 and January of 1999 he did not see the plaintiff at all, nor did he prescribe any medications. Dr. Manale also admitted that he did not obtain any of the plaintiff's past medical records until some time in October of 1997, almost a year after the accident, and that he did not discuss plaintiff's prior injuries with him. He never saw the 1991 MRI or the CT scan ordered by Dr. Olson. Dr. Manale did not really discuss the plaintiff's prior medical history with him until May of 1999. He testified that the plaintiff's restrictions were the same after surgery as they had been before.

Dr. Manale admitted that the discogram he ordered had a substantial subjective component, i.e., the plaintiff's subjective complaints of pain in many instances did not correspond to what showed up on the MRI. Dr. Manale also admitted that he based his conclusion that Mr. Guillot had been

asymptotic between 1991 and 1995 on what Mr. Guillot told him. Therefore, plaintiff's argument in brief that, "Dr. Manale, plaintiff's treating physician testified that Mr. Guillot was asymptomatic prior to the 1995 accident", need be given no more weight than the fact finder chooses to give to Mr. Guillot. Similarly, Dr. Manale's conclusion as to causation was based on information supplied by Mr. Guillot.

We find that where damages are concerned, the record as a whole would permit a reasonable fact finder to conclude that the bulk of plaintiff's injuries were either pre-existing and/or not as severe as alleged. Accordingly, we cannot say that the amounts awarded by the jury were manifestly erroneous, clearly wrong, or constituted an abuse of the jury's discretion.

II. PLAINTIFFS' SECOND ASSIGNMENT OF ERROR

The plaintiffs assign as their second error the failure of the trial court to grant their motion for additur, the failure to grant their alternative motions for JNOV, new trial for damages only, or an entire new trial. As we have already found no error in the findings of the jury, *per force,* we find no merit in the plaintiffs' second assignment of error. Moreover, we find no error in the reasons expressed orally by the trial judge at the time he denied

plaintiffs' post-trial motions:

> Gentlemen, the Court does not agree with [plaintiffs'] idea that the words "injury caused as a result of the accident" means that they were saying the entirety of the injuries alleged are caused by the negligent act of the defendant. I did agree with [defendants'] position that certainly the injuries awarded are reasonable if the jury concluded that the only injuries sustained as a result of the accident were those soft tissue injuries, as promoted by the defense in this case. Based on that, based on the fact that the award made by the jury would be reasonable under the circumstances, and particularly in view of the light that if you look at the future lost wages, the jury awarded zero. So that clearly indicates to the Court that the jury did not buy into the argument of plaintiff that serious and future injuries resulted from this particular accident.
>
> . . . . I do believe, based on the information provided to the court at the time of this three-day jury trial, that the verdict was indeed most reasonable considering the theory outlined by the defendant in that case.

We find no merit in plaintiffs' second assignment of error.

III. PLAINTIFFS' THIRD ASSIGNMENT OF ERROR

In their third assignment of error, plaintiffs complain that the trial court erred in failing to award them the full amount of the expert fees for Drs. Manale, Ruel, Wolfson and Gorman. Plaintiffs submitted claims for costs totaling $17,168.42. the trial court awarded plaintiffs only $4,852.00.

A substantial portion (but not all) of the difference between what the plaintiffs claimed and what was awarded is attributable to the fact that the trial court awarded only $500 for each of the aforementioned doctors instead of the following amounts requested by the plaintiffs: Dr. Manale -- $3,050; Dr. Ruel -- $2,000; Dr. Wolfson – $3,450; Dr. Gorman -- $4,784.40.

The trial judge stated that he awarded the costs shown by the clerk of court; $500 each for expert fees for Drs. Manale, Ruel, Wolfson, Gorman and Griffith; $358.50 for the videographer for the deposition of Dr. Ruel; $338.45 for the court reporter for Dr. Ruel's deposition; and $275 for the subpoenas for Dr. McNish's deposition.

In explaining these figures the trial judge stated that he would award expert fees only for time in court and not for preparation. He also explained that he did not believe the $2,000 cost for Dr. Ruel's deposition. The plaintiffs conceded that the figure was unreasonable, but contended that that was the amount that they had been billed and forced to pay.

LSA-C.C.P. art. 1920 provides in pertinent part:

> [T]he court may render judgment for costs, or any part thereof, against any party, as it may consider equitable.

The trial court's assessment of costs can be reversed by this Court only upon a showing of an abuse of discretion. *In re Succession of Tilley*,

99-64 (La.App. 3 Cir. 6/2/99), 742 So.2d 9. A trial judge enjoys great discretion under La. C.C.P. art. 1920 in the taxing of expert witness fees. *Boseman v. Orleans Parish School Board*, 98-1415, p. 9 (La.App. 4 Cir. 1/6/99), 727 So.2d 1194, 1199. Trial courts are not bound by agreements concerning expert witness fees, by the expert's statements concerning his charges, or by the actual fee paid to an expert witness. *Id.* In fact, those facts should not even be considered by the courts when determining fees. *Id.* Moreover, a trial court has discretion to refuse to tax the costs of the prevailing party's expert witnesses against the losing party. *Id.*

The trial court gave more than adequate oral reasons for awarding costs as he did at the time of the hearing on plaintiff's motion to fix costs. We find no abuse of the trial court's discretion in its award of costs.

For the foregoing reasons the judgment of the trial court is affirmed.

AFFIRMED